

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE KEITHLY and DONOVAN LEE,)
Individually and on Behalf of all Others)
Similarly Situated,)
Interim Lead Plaintiffs,)
v.)
INTELIOUS, INC., A Delaware Corporation; and)
INTELIOUS SALES, LLC, A Nevada Limited)
Liability Company,)
Defendants)
v.)
ADAPTIVE MARKETING, LLC, a Delaware)
Limited Liability Company,)
Third Party Defendant.)

**DECLARATION OF KARIN B.
SWOPE IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I, Karin B. Swope, declare as follows:

1. I am an attorney at Keller Rohrback L.L.P., and am one of the Interim Lead Co-
Counsel in this case. I make this Declaration based on personal knowledge and am competent to
testify to the matters set forth herein.

2. Attached hereto as Exhibit 1 is the April 22, 2011 Expert Report of Dr. Michael
A. Kamins with Exhibits 1-3 attached thereto.

DECLARATION OF KARIN B. SWOPE IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
(No. C09-1485RSL) Page - 1

LAW OFFICES OF
KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98101-3052
TELEPHONE: (206) 623-1900
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1 3. Attached hereto as Exhibit 2 is a true and correct copy of the Consent Decree in
2 *State of Washington v. Intelius*, No. 10-28955, (Wash. Super. Ct. King County, Aug. 10, 2010).

3 4. Attached hereto as Exhibit 3 are true and correct copies of non-confidential
4 excerpts from the deposition of Bruce Allen Keithly, taken January 14, 2011.

5 5. Attached hereto as Exhibit 4 are true and correct copies of non-confidential
6 excerpts from the deposition of Donovan Lee, taken January 24, 2011.

7 6. Attached hereto as Exhibit 5 are true and correct copies of Intelius's Offer Codes
8 (INTELIUS-K 000928-1042).

9 7. Attached hereto as Exhibit 6 is a true and correct copy of the Intelius Consumer
10 Site Terms and Conditions which Plaintiffs' counsel caused to be printed out from the Internet
11 on June 28, 2010.

12 8. Attached hereto as Exhibit 7 is a true and correct copy of the Intelius Consumer
13 Site Terms and Conditions which Plaintiffs' counsel caused to be printed out from the Internet
14 on August 19, 2009.

15 9. Attached hereto as Exhibit 8 is a true and correct copy of the Intelius Privacy
16 Policy Effective May 01, 2006 which Plaintiffs' counsel caused to be printed out from the
17 Internet on August 19, 2009.

18 10. Attached hereto as Exhibit 9 is a true and correct copy of the Intelius.com Terms
19 and Conditions (Privacy Policy) Effective December 2009 which Plaintiffs' counsel caused to be
20 printed out from the Internet on January 31, 2011.

21 11. Attached hereto as Exhibit 10 is a true and correct copy of the Amended Order
22 Granting Plaintiff's Motion for Class Certification Pursuant to CR 23(b)(2) in *Jerry Cooper,*
23 *Inc v. Sunset Chevrolet, Inc.*, No. 04-2-12577-4 SEA (Wash. Super. Ct. King County Sept. 24
24 2004).

25 12. Attached hereto as Exhibit 11 is a true and correct copy of the Findings of Fact
26 and Conclusions of Law and Order Grating Plaintiff's Motion for Class Certification Pursuant to

1 CR 23(b)(2) in *Baron v. Merch. Serv. of Seattle Inc.*, No. 05-2-04738-1SEA (Wash. Super. Ct.
 2 King Apr. 4, 2006).

3 13. Attached hereto as Exhibit 12 is a true and correct copy of the Order Certifying
 4 Class Action Pursuant To CR 23(b)(2) in *Maguire v. GMAC Mortgage Corp.*, No. 03-2-32393-4
 5 SEA (Wash. Super. Ct. King County Mar. 25, 2004).

6 14. Attached hereto as Exhibit 13 is a true and correct copy of a confidential July 11,
 7 2008 email (INTELIUS_K_E023712-3) produced by Intelius.

8 15. Attached hereto as Exhibit 14 are true and correct copies of *Kelley v. Microsoft*,
 9 No. 09-35699, 2010 WL 3556196 (9th Cir. Sept. 14, 2010) and the Order Denying Class
 10 Certification in *Kelley v. Microsoft*, No. 07-475, (W.D. Wash. May 24, 2011).

11 16. Attached hereto as Exhibit 15 are true and correct copies of excerpts from a
 12 confidential deposition (INTELIUS-K 009021, 009040-1) taken in *State of Washington v.*
 13 *Intelius Inc.*

14 17. Attached hereto as Exhibit 16 is a true and correct copy of the Complaint for
 15 Injunctive and Other Relief Under the Consumer Protection Act, RCW 19.86 in *State of*
 16 *Washington v. Intelius*, No. 10-28955, (Wash. Super. Ct. King County, July 23, 2010).

17 18. Attached hereto as Exhibit 17 is a true and correct copy of the Reply in Support of
 18 Intelius, Inc.'s Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 in *In re Intelius,*
 19 *Inc., Post-transaction Mktg. and Sales Practices Litig.*, No. 2140, (J.P.M.L. Jan. 20, 2010) with
 20 the Order Denying Transfer in *In re Intelius, Inc., Post-transaction Mktg. and Sales Practices*
 21 *Litig.*, No. 2140, (J.P.M.L. Apr. 14, 2010) attached thereto.

22 19. Attached hereto as Exhibit 18 is a true and correct copy of the Declaration of
 23 Ronald V. Thunen III in Support of Defendants' Rule 12(c) Motion for Judgment on the Pleading
 24 to Dismiss Plaintiffs' Consolidated Class Action Complaint in *Keithly et al. v. Intelius et al.*, 09-
 25 1485 (W.D. Wash. Aug. 16 2010) with Exhibits A-D attached thereto.

20. The damages figure is calculated by adding the total amount of revenue from Identity Protect minus refunds and chargebacks, as provided by Intelius in discovery, and subtracting the total amount of revenue derived from customers who enabled the member-enabled services on the Intelius website (6.43%). Since Adaptive has not produced any material discovery to date, for revenue derived from the Adaptive and Intelius post-transactional marketing agreement, Plaintiffs added the total commission Adaptive paid Intelius and the total share of the revenue customers paid to Adaptive using estimation models based on information provided by Intelius. Plaintiffs then subtracted the estimated amount of revenue derived from customers who did not use or activate their benefits for the Adaptive services. The total IDP and total Adaptive post-transactional revenue, minus refunds, chargebacks, and amounts derived from user-enabled benefits, is \$162,406,171. Plaintiffs will provide damages with more precision once they receive discovery from Adaptive, who has records of exact charges to customers through the Intelius website, and the number of customers who did not use or activate the benefits or services that Adaptive offered. Plaintiffs expect this discovery when Adaptive complies with the court’s order on Plaintiffs’ Motion to Compel.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED this 2nd day of June, 2011 at Seattle, Washington.

By s/ Karin B. Swope
Karin B. Swope, WSBA #24015

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2011, I caused to be served a true and correct copy of the

DECLARATION OF KARIN B. SWOPE IN SUPPORT OF PLAINTIFFS' MOTION

FOR CLASS CERTIFICATION on the following recipients via the method indicated:

Arthur W. Harrigan, Jr., WSBA #1751
Tyler Farmer, WSBA #39912
DANIELSON HARRIGAN LEYH &
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999 Third Avenue, Suite 4400
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- Via ECF
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- Via U.S. First Class Mail
- Via facsimile to (206) 623-8717
- Via email to:
arthurw@dhlt.com; and
tylerf@dhlt.com

*Attorneys for Intelius, Inc and
Intelius Sales, LLC*

Cori Gordon Moore, WSBA #28649
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Seattle, Washington 98101

- Via ECF
- Via Hand Delivery
- Via U.S. First Class Mail
- Via facsimile to (206) 359-3849
- Via email to:

Attorneys for Adaptive Marketing LLC

DATED this 2nd day of June, 2011.

s/Karin B. Swope
Karin B. Swope

**CERTIFICATE OF SERVICE
(No. C09-1485RSL)**

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